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UNUM LIFE INSURANCE COMPANY
OF AMERICA, UNUMPROVIDENT CORPORATION
and MDL DENTAL, LTD, STD, LIFE, AD&D PLAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

THERESA MONSEUR KELLY,

Plaintiff,

vs.

UNUM LIFE INSURANCE COMPANY OF
AMERICA, UNUMPROVIDENT
CORPORATION, MDL INFORMATION
SYSTEMS, INC., and MDL DENTAL, LTD,
STD, LIFE, AD&D PLAN

Defendants.

CASE NO. C 05-02915-CW

**STIPULATION OF DISMISSAL OF
DEFENDANT MDL
INFORMATION SYSTEMS, INC.
WITHOUT PREJUDICE;
WITHDRAWAL OF VENUE
DEFENSES; ORDER THEREON**

INTRODUCTION

Plaintiff Theresa Monseur-Kelly ("plaintiff"), and defendants Unum Life Insurance Company of America ("Unum"), UnumProvident Corporation, and MDL Dental LTD, STD, Life and AD&D plan (collectively "defendants"), hereby submit to the Court a Stipulation and Order requesting that MDL Information Systems, Inc. be dismissed without prejudice and that the defendants' venue defenses be withdrawn. This request is based on the following agreements of the parties:

This matter involves a claim for disability benefits made by plaintiff under an ERISA plan. The defendants represent that the plan that is the subject of this action is insured for disability insurance by a policy issued by Unum Life Insurance Company of America ("Unum"). The parties agree that the correct plan is the plan which obtains disability insurance under the policy and that this plan is correctly sued in this matter, regardless of the name. The parties agree that any subsequent change in the name of the plan is merely clerical and would not affect any of plaintiff's rights against the plan.

The defendants agree that Unum and the plan are responsible for the payment of disability benefits under the policy that may be awarded to plaintiff in this action as a result of a final judgment after any appeals are concluded. The defendants represent that Unum was a plan administrator with regard to the plaintiff's claim for benefits. The parties disagree on whether UnumProvident Corporation is a proper defendant and whether it would be liable for any judgment awarded to the plaintiff. The parties agree that the disputed issues regarding UnumProvident Corporation should be reserved for resolution at a later date.

In light of the agreement that Unum and the plan will be responsible for paying any disability benefits awarded to the plaintiff under the policy, the plaintiff agrees to dismiss MDL Information Services Inc. without prejudice. As a result, plaintiff wishes to dismiss MDL Information Systems, Inc. without prejudice with the mutual understanding that MDL can be brought into this action again if plaintiff chooses to do so.

Because plaintiff has agreed to dismiss MDL without prejudice, and based on further investigation, defendants agree to withdraw their venue defense raised in their Answer and agree that venue is proper before this court. In the event that the plaintiff attempts to amend her pleadings to state allegations against any new defendant that is not a citizen of California or to allege any non-ERISA causes of action, the defendants have the right to re-assert their venue defense. In the event that this defense is asserted by any defendant under those circumstances, defendants agree that plaintiff can bring MDL back into this action by amending her complaint through a stipulation and proposed order.

STIPULATION

Accordingly, plaintiff Theresa Monseur-Kelly, through her undersigned counsel and defendants Unum Life Insurance Company of America, UnumProvident Corporation, and the plan, through their undersigned counsel, hereby stipulate that: Based on the agreements and representations of the parties are set forth above, which are hereby adopted as part of this stipulation, the plaintiff will dismiss MDL Information Systems, Inc. without prejudice. The defendants withdraw the venue defenses raised in their Answer.

Dated: November 15, 2005

BRANHAM & DAY, P.C.

By


John Wood

Lead Counsel for Plaintiff

THERESA MONSEUR KELLY

EMISON, HULLVERSON & BONAGOFISKY

By


Theo J. Emission III

Local Counsel for Plaintiff

THERESA MONSEUR KELLY

KELLY, HERLIHY & KLEIN, LLP

Date: November 15, 2005

By

Sean P. Nalty
Sean P. Nalty

Attorney for Defendants

UNUM LIFE INSURANCE COMPANY
OF AMERICA, UNUMPROVIDENT
CORPORATION and MDL DENTAL, LTD, STD,
LIFE, AD&D PLAN

ORDER

Based on the stipulation of the parties set forth above, the Court hereby accepts the stipulation of the parties and orders as follows:

1. MDL Information Systems, Inc. is hereby dismissed without prejudice.
2. The defendants hereby withdraw the venue defenses raised in their answer.

IT IS SO ORDERED

CLAUDIA WILKEN, JUDGE OF THE
UNITED STATES DISTRICT COURT

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